

REMARKS

Favorable consideration and allowance are requested for claims 1-3 and 7-11 in view of the following remarks.

Status of the Application

Claims 1-3 and 7-11 are pending in this application. Claims 4-6 were previously cancelled. Claims 1 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,914,900 B1 to Komatsu *et al.* (the “Komatsu patent”) in view of Dynamic Routing with Endpoint Admission Control for VoIP Networks, 2003 IEEE International Conference on Communications, 15 May 2003, pages 1728-1732, to Kong *et al.* (the “Kong publication”). Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Cisco VOIP Call Admission Control, August 2001, pages 1-26 to Odom (the “Odom publication”) in view of U.S. Patent 7,496,044 B1 to Wing *et al.* (the “Wing patent”). Claims 3 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Odom publication in view of the Komatsu patent, U.S. Patent 7,366,097 to Zuberi *et al.* (the “Zuberi patent”), and the Wing patent. Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Komatsu patent and the Kong publication, and further in view of the Odom publication. Claims 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Komatsu patent and the Kong publication and further in view of the Wing patent. Claim 1 has been amended.

Rejections under 35 U.S.C. § 103(a)

According to the Office Action, the combination of the Komatsu patent and the Kong publication renders claims 1 and 10 obvious. In response, Applicants respectfully submit that these claims are patentable over the cited references for the reasons stated below.

With respect to claim 1, the Office Action states that, “Komatsu fails to disclose a method further comprising deciding to determine a current packet loss rate based on the packet loss rate of previous calls, determining the current packet loss rate and deciding to drop a call based on the current packet loss rate.” Office Action at 4. The Office Action further states that the Kong publication discloses these features.

In the basic operation of endpoint measurement based admission control (EMBAC) described in section II of the Kong publication, admission control between node 1 and node 2 relies on each node sending probe packet flows to each other independently. After a fixed probe time, each probe calculates a packet loss rate for the received probe flow, and, if the packet loss rate is above a predetermined admission control threshold, the status between the two nodes is considered to be busy and, thus, the call will be dropped.

In the basic dynamic routing mode, described in section IIIB of the Kong publication, more than one probe packet flow is sent from each node along different paths and the call will be dropped if both paths have packet loss rates above the admission control threshold. And in the advanced dynamic routing

mode, described in section IIIC of the Kong publication, the link route between two nodes is selected in accordance with information from the last call – the link route being disabled for the next call if the admission control test was failed in the last call. This procedure does not rely on a “current packet loss rate,” but merely on whether the last call made on a particular link route was dropped or not, so that it is removed from the options for sending probe packet flows to determine the actual link route that will be used.

The Komatsu patent discloses providing a VoIP call with “excellent communication quality” (see col. 2, lines 9 to 14) and selecting an alternative route within the IP network if the quality is bad (see col. 2, lines 15 to 23). Disconnection or dropping of the call is the last resort, as described at column 3, lines 13 to 27. There is no teaching or suggestion in Komatsu that conditional probing is required as provided by Kong.

In the present invention, there is no requirement for conditional probing and there is no disclosure or suggestion that probe packet flows that are sent between the two nodes to determine whether the call is to be dropped. The decision to drop a call is based purely on the current packet loss rate and not on whether the last call was dropped or not. For at least these reasons, Applicants respectfully submit that claim 1 is patentable over the Komatsu patent and the Kong publication, either individually or in combination.

With respect to claim 10, the Office Action states that the Komatsu patent (it appears that the reference to the Odom publication is in error) “fails to

disclose a method wherein said step of determining a packet loss rate of previous calls comprises determining the packet loss rate from a first local area network to a second local area network.” Office Action at 5. The Office Action further states that the Kong publication discloses this step.

Although the Kong publication discloses an originating node and a terminating node in a network, there is no disclosure or suggestion that the originating node and terminating node are in different local area networks. A node-to-node connection is shown in Fig. 1 with a mesh network being shown in and described in relation to Fig. 2.

The Office Action states that “the system of Kong decides to determine a packet loss rate for a network path only if the packet loss rate of a previous probe was acceptable.” Office Action at 5. However, this is not the same as determining a packet loss rate of previous calls. Therefore, Applicants respectfully submit that claim 10 is patentable over the Komatsu patent and the Kong publication, either individually or in combination.

With respect to claim 2, the Office Action states that this claim is rendered obvious over the Odom publication in view of the Wing patent. In response, Applicants respectfully submit that the Wing patent is not prior art to the present invention. The present invention has an effective filing date of March 1, 2004. The Wing patent, on the other hand, was filed on March 9, 2004. Although the face of the Wing patent indicates that it is a continuation of U.S. Patent Application Serial No. 10/723,118 (the “Wing application”), which was

filed on November 26, 2003. The Wing application was published as U.S. Patent Publication No. 2006/0034188 A1 (the "Wing publication") on February 16, 2006. Based on a review of the Wing publication, it appears that the Wing patent cannot properly be a continuation of the Wing application. As the Office Action does not indicate what, if any, teachings in the Wing publication (as opposed to the Wing patent) are relevant to the patentability of claim 2, Applicants respectfully submit that claim 2 is in condition for allowance.

With respect to claims 3 and 11, the Office Action states that the combination of the Odom publication, the Komatsu patent, the Zuberi patent, and the Wing patent renders these claims obvious. As stated above, with respect to claim 2, the Office Action does not indicate what, if any, teachings in the Wing publication (as opposed to the Wing patent) are relevant to the patentability of the claims 3 and 11, Applicants respectfully submit that these claims are in condition for allowance.

With respect to claim 7, the Office Action states that the combination of the Komatsu patent, the Kong publication, and the Odom publication renders this claim obvious. In response, and for the reasons discussed above with respect to claim 1, Applicants respectfully submit that the Kong publication discloses testing the connection bi-directionally and requires the generation of a second set of probe packets at the receiving node. Therefore, Applicants assert that the Kong publication teaches away from the subject matter of claim 7, and, as a result, this claim is allowable.

With respect to claims 8 and 9, the Office Action states that the combination of the Komatsu patent, the Kong publication, and the Wing patent renders these claims obvious. As stated above, with respect to claim 2, the Office Action does not indicate what, if any, teachings in the Wing publication (as opposed to the Wing patent) are relevant to the patentability of the claims 8 and 9. Applicants respectfully submit that these claims are in condition for allowance.

* * * * *

If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 038665.56183US).

Respectfully submitted,

Date: September 28, 2009

/Michael H. Jacobs/
Michael H. Jacobs
Registration No. 41,870

CROWELL & MORING, LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
MHJ:msy